

Before the  
Federal Communications Commission  
Washington, D.C. 20554

JUN 15 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of ) CC Docket No. 95-155  
Toll Free Service Access Codes )

**REPLY OF THE TOLL FREE USERS' COALITION**

The Toll Free Users' Coalition ("Coalition"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, hereby files its reply to the opposition filed by Sprint Communications Company, L.P. ("Sprint") to its Petition for Reconsideration of the Fourth Report and Order in the above-captioned proceeding.

Sprint conveniently categorizes at least five reasons for the Commission to reconsider its decision to assign toll free numbers in the 877 service access code and all subsequent toll free service access codes on a first-come, first-served basis, rather than the on the right of first refusal basis on which the Commission assigned toll free numbers in the 888 service access code.<sup>1</sup> Each of these reasons is considered in turn below.

**Consumer confusion.** The Coalition pointed out that assigning different subscribers the same toll-free number in different service access codes will lead to consumer confusion. Although the Commission believed that the consumer confusion would decrease with the introduction of the 877 subsequent codes, Sprint misunderstands the Coalition's statement that "*decreased* confusion is not the same as *no* confusion." The Coalition's point is not that a confusion-free system can be designed, but rather that *any* system involves some confusion, and the system that minimizes confusion is, other things being equal, the best system. The Commission should have taken into

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1. See Opposition of Sprint at 1-2.

account the *increased* confusion that will be created as the number of subscribers assigned to identical 7-digit numbers increases with the deployment of each subsequent service access code.

**Harm to existing subscribers.** Sprint reasons that strict enforcement of the rules prohibiting hoarding and brokering should help prevent the harm to an existing holder of a vanity number that occurs when others subscribe to the identical 7-digit number in other service access codes. However, the harm arises from the active use of the identical 7-digit numbers to siphon off customers of an established, well-promoted business. The Commission's hoarding and brokering rules are utterly inapplicable to the active use of a toll free number. The Coalition also agrees with the Office of Advocacy of the United States Small Business Administration ("Office of Advocacy") that the Fourth Report and Order contains at least one procedural irregularity that is likely due to its too-hasty release.<sup>2</sup>

**Fair and equitable distribution of toll free numbers.** The Coalition agrees with the Office of Advocacy, the Direct Marketing Association and American Car Rental Association ("DMA"), and ICB, Inc. ("ICB"), each of whom point out that the implementation of first-come, first-served access to the SMS database used to reserve toll free numbers is not truly first-come, first-served because large RespOrgs with direct access to the SMS database have an undisputed advantage in securing toll free numbers for their subscribers.<sup>33</sup> This situation is exacerbated by the conflict of interest of

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2. See Petition of Office of Advocacy at 14 ("in its haste to release the Fourth Report and Order prior to the designated rollout date for the 877 code the Commission neglected to fulfill its statutory obligation to analyze fully the impact of its rules on small businesses *before* it reached a final decision.").
  3. See Petition of Office of Advocacy at 21-24; Petition of DMA at 9-10; Comments of ICB at 2-6.

the largest RespOrgs, who are themselves subscribers in competition with their own subscribers for toll free numbers.<sup>4</sup>

**Code exhaustion.** Sprint restates the Commission’s argument that “as more entities subscribe to toll free numbers, the percentage of numbers deemed commercially valuable may also increase.”<sup>5</sup> But this is mere speculation. In fact, the percentage of commercially valuable numbers may actually *decrease*, since much of the demand for new toll free numbers is driven by private uses, such as toll free access to pagers, voice mail, and residences.<sup>6</sup> This adds additional weight to the Coalition’s argument that assigning toll free numbers on the basis of a right of first refusal will not contribute significantly to code exhaustion.

**Principled decisionmaking.** Sprint is simply incorrect in contending that a meaningful distinction can be drawn between the opening of the 888 service access code and the opening of subsequent codes that could justify the difference in treatment between a right of first refusal and a first-come, first-served assignment method. Many callers are just learning that “800” is not synonymous with “toll free,” and the brief period between the opening of the 888 code and the 877 code was not enough time for that knowledge to be fully absorbed. The same circumstances that justified a right of first refusal in the 888 toll free code also justify a right of first refusal in subsequent codes.

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4. See Petition of DMA at 5, Comments of ICB at 3.

5. See Opposition of Sprint at 3.

6. See Comments of ICB at 8 (describing the “explosion” of private uses that do not conform to the traditional commercial toll free model).

For the reasons stated above and in the four Petitions for Reconsideration filed in this proceeding, the Commission should set aside requested numbers in the 877 service access code and all subsequent codes and award a right of first refusal to those numbers.

Respectfully submitted,

TOLL FREE USERS' COALITION

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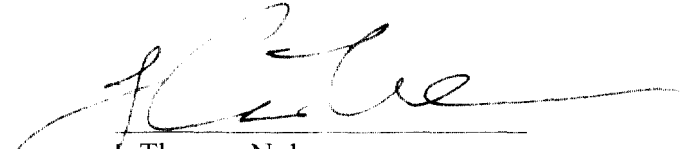
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Dated: June 15, 1998

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply of the Toll Free Users' Coalition was sent by United States first-class mail, postage prepaid, on the 15th day of June, 1998 to the below-listed parties:

  
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